IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Bail Appl..No. 7348 of 2007()

CRIME NO. 386/07 OF KILIMANOOR POLICE STATION

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PETITIONER/ACCUSED

SHIBU, S/O.VIDHYADHARAN, THUMBODE
PUTHEN VEEDU, PUTHIYAKAVU, KILIMANOOR,
THIRUVANANTHAPURAM.

BY ADV. SRI.V.S.BABU GIREESAN

RESPONDENTS: COMPLAINANT

SUB INSPECTOR OF POLICE, KILIMANOOR
POLICE STATION, THIRUVANANTHAPURAM,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7348 of 2007

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Dated this the 30th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner apprehends arrest in a crime registered for offences punishable, inter alia, under Sections 332 and 308 I.P.C.

2. The Additional S.I. of the local police station allegedly received information that there was some quarrel going on in the public road and there was obstruction to the traffic. When he reached the scene, he allegedly found the petitioner involved in a dispute with a lorry driver, consequent to a vehicle accident, which had taken place between the vehicle of the petitioner and that of the said driver. The petitioner allegedly got wild and attacked the police official with a wooden plank. He thereafter rushed to his own shop. He broke a piece of glass and with that broken piece of glass threatened the police official. He later escaped from the scene. Two crimes were registered against the petitioner. The first one is the present case regarding the alleged

attack on police official. The other is about the traffic accident which took place.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The police officials have made totally false allegations against the petitioner. In fact the petitioner was attacked and he suffered injuries also. To avoid blame for themselves they have cooked up false allegations against the petitioner. Inclusion of Section 308 I.P.C. reveals the want of bonafides on the part of the police. The petitioner contends that he has not committed any offence. At any rate, the allegation under Section 308 I.P.C. is not justifiable at all, submits the counsel. The learned counsel further submits that if this court were not inclined to grant anticipatory bail, the petitioner may be given an opportunity to surrender before the learned Magistrate and seek regular bail without the threat and risk of going into police custody before he surrenders before the learned Magistrate. He apprehends physical harm if he surrenders before the Investigating Officer.

4. The learned Prosecutor opposes the application. To a pointed query of this court, the learned Prosecutor submits that allegation

under Section 308 I.P.C. may not strictly lie in the facts and circumstances of this case. At any rate, the learned Prosecutor does not raise any objection against consideration of the application as if the allegation under Section 308 I.P.C. is not there at all. But the learned Prosecutor opposes the application for anticipatory bail. He submits that at any rate the allegation under Section 332 I.P.C., a non-bailable offence, is perfectly justified. The learned Prosecutor submits that the State has no objection in this court granting the petitioner an opportunity to surrender directly before the learned Magistrate reserving the right of the police to seek appropriate orders from the court.

5. In the peculiar facts and circumstances of this case, I am satisfied that directions under Section 438 Cr.P.C. can be issued in favour of the petitioner.

6. In the result:

(1) This application is allowed in part.

(2) The following directions are issued under Section 438 Cr.P.C.

a) The petitioner shall surrender before the learned Magistrate on or before 7.12.2007 at 11 a.m. He may file application for regular bail after giving sufficient prior notice to the learned Prosecutor in charge of the case. Needless to say, it shall be open to the Investigator, if that be necessary, to apply for custody of the petitioner. Appropriate orders shall be passed by the learned Magistrate expeditiously on both applications, if filed. Such applications shall be considered by the learned Magistrate ignoring the allegation under Section 308 I.P.C

(b) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 7.12.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(c) If the petitioner were arrested prior to his surrender on 7.12.2006 as directed in clause (1) above, he shall be released on his executing a bond for Rs. 25,000/- without any surety undertaking to appear before the learned Magistrate on 7.12.2007.

(R. BASANT)
Judge

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